

**COMMENTS OF THE STATES OF CALIFORNIA, CONNECTICUT, ILLINOIS,
MINNESOTA, NEW YORK, OREGON, VERMONT, AND WASHINGTON; THE
COMMONWEALTH OF MASSACHUSETTS; AND THE CITY OF NEW YORK**

March 28, 2025

Comments submitted *via* regulations.gov

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1000 Independence Avenue SW
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**RE: Docket No. EERE-2017-BT-TP-0007
RIN 1904-AD82
“Energy Conservation Program: Energy Conservation Standards for Commercial
Refrigerators, Freezers, and Refrigerator-Freezers,” 90 Fed. Reg. 11,466 (Mar. 7,
2025).**

The undersigned states (“States”) respectfully submit this comment on the U.S. Department of Energy’s (“DOE’s”) action purporting to delay the effective date of the energy conservation standards for commercial refrigerators, freezers, and refrigerator-freezers (“commercial refrigeration equipment”), 90 Fed. Reg. 7,464 (Jan. 21, 2025) (the “Final Rule”). On March 7, 2025, DOE issued a subsequent rule purporting to delay the effective date of the Final Rule to May 20, 2025, and requested comment on the impacts of this delay and of potential further delays of the effective date of the Final Rule, as well as on the legal, factual, or policy issues raised by the Final Rule. 90 Fed. Reg. 11,466 (Mar. 7, 2025) (the “Delay Rule”).

The Final Rule is the culmination of a multi-year regulatory process undertaken by DOE pursuant to the Energy Policy and Conservation Act (“EPCA”), 42 U.S.C. § 6201 *et seq.*, in which DOE determined that its energy conservation standards for commercial refrigeration equipment are technologically feasible and economically justified, and will result in significant energy savings. This process began with a request for information and data and continued with a preliminary analysis, solicitation of public comments, a notice of proposed rulemaking, and receipt of more public comments, after which DOE developed an analytical framework for the Final Rule that considered and analyzed information, data, and comments from a variety of interested parties, all pursuant to a rulemaking compliant with section 553 of the Administrative Procedure Act (“APA”), 5 U.S.C. § 553. *See* 90 Fed. Reg. at 7478-82.

Compared to the absence of new standards, assuming a 30-year equipment lifetime, the Final Rule will have the following benefits:

- Consumer savings of up to \$4.61 billion;
- Cumulative carbon dioxide emissions reductions of 19.7 million metric tons; and

- Significant environmental and public health benefits from reduced emissions of carbon dioxide, sulfur dioxide, nitrogen oxides, methane, and other pollutants.

90 Fed. Reg. at 7469-71.

The States oppose any attempt to delay or weaken the Final Rule. The States have a strong interest in reducing the economic and environmental costs of energy use, and support DOE's adoption of energy conservation standards for commercial refrigeration equipment because such standards are both technically feasible and economically justified. *See* 42 U.S.C. § 6313(a)(6). In addition, EPCA's anti-backsliding provision prohibits DOE from prescribing any amended standard that either increases the maximum allowable energy use or decreases the minimum required energy efficiency of a covered product. *See* 42 U.S.C. § 6295(o)(1). That provision prohibits DOE from weakening or delaying efficiency standards once they are published in the Federal Register. *NRDC v. Abraham*, 355 F.3d 179, 197 (2d Cir. 2004).

Further, the Delay Rule is legally invalid, for two reasons. First, DOE points to no legal authority for the Delay Rule, instead citing only a Presidential Memorandum announcing a "Regulatory Freeze Pending Review," an unlawful edict that conflicts with EPCA. It is well settled that the President does not have the authority to overrule a congressional statute. *See, e.g., Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579, 587 (1952) ("[T]he Constitution is neither silent nor equivocal about who shall make laws which the President is to execute."). Second, DOE's assertion that the notice "is exempt from notice and comment because it constitutes a rule of procedure under 5 U.S.C. § 553(b)(A)," 90 Fed. Reg. at 11,467 (Mar. 7, 2025), is incorrect. Courts have defined agency procedural rules as the "technical regulation of the form of agency action and proceedings . . . which merely prescribes order and formality in the transaction of . . . business." *Pickus v. U.S. Bd. of Parole*, 507 F.2d 1107, 1113-14 (D.C. Cir. 1974). The exception excludes any action which "is likely to have considerable impact on ultimate agency decisions," or that "substantially affects the rights of those over whom the agency exercises authority." *Id.* at 1114. The Delay Rule does not constitute a rule of procedure, because it is not a process rule for conducting DOE business: it is a substantive rulemaking under the APA altering the effective date of an industry-wide regulation that will substantially affect the rights of the regulated community. For this reason, the Delay Rule is subject to notice and comment. *See, e.g., Clean Air Council v. Pruitt*, 862 F.3d 1, 6 (D.C. Cir. 2017) ("delaying [a] rule's effective date . . . [is] tantamount to amending or revoking a rule[,] which must go through notice and comment).

Finally, no legal, factual, or policy issues raised by the Final Rule justify delaying its effective date. As documented above, the standards adopted in the Final Rule realize significant energy savings, lowered operating costs, and environmental and public health benefits. And as with DOE's recent delays of effective dates for other energy conservation standards,¹ DOE's delay of the Final Rule's effective date, and its previewing of further delays, serve no legitimate

¹ *See* Effective date delays for Energy Conservation Standards for Walk-in Coolers and Walk-in Freezers, 90 Fed. Reg. 9951 (Feb. 20, 2025), 90 Fed. Reg. 13054 (March 20, 2025), and States' March 13, 2025, Comment, Dkt. EERE-2017-BT-STD-009; *see also* Effective date delays for Energy Conservation Standards for Consumer Gas-Fired Instantaneous Water Heaters, 90 Fed. Reg. 9951 (Feb. 20, 2025), 90 Fed. Reg. 13054 (March 20, 2025), and States' March 13, 2025, Comment, Dkt. EERE-2017-BT-STD-0019.

public purpose and will encourage manufacturers to forego or delay making the investments needed to comply with the lawful updated standards in the Final Rule, which by its terms became effective on March 24, 2025.

For the foregoing reasons, the undersigned States urge DOE to comply with its statutory obligation to keep federal energy conservation standards up to date, and cease its unlawful efforts to delay the effective date of standards for commercial refrigeration equipment.

Thank you for the opportunity to comment.

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